

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION
Emergency Action to Amend Sections 27.60 and 28.55
Title 14, California Code of Regulations
Re: Changes to Black Rockfish Bag Limit
(for Conformance with Federal Regulations)

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Emergency regulatory action by the Fish and Game Commission (Commission) is needed to bring California's sport fishing regulations (Sections 27.60 and 28.55, Title 14, CCR) for black rockfish into conformance with recently amended federal recreational groundfish rules scheduled to take effect May 1, 2004 (50 CFR Part 660). The changes to federal regulations are the result of in-season management measurements adopted by the Pacific Fishery Management Council (Council) at its meeting during April 8-12, 2004 in Sacramento.

The federal action will prohibit retention of black rockfish in the Northern Rockfish and Lingcod Management Area (NRLMA) (which is between 40°10' N. latitude and the Oregon – California border) from May 1 through May 31, 2004 and from September 1 through December 31, 2004 in California's recreational fishery. Current state regulations establish a year-round fishing season in the NRLMA, where up to 10 black rockfish may be taken or possessed per angler per day. The prohibition on retaining black rockfish during May and from September through December in the NRLMA is necessary to prevent California's harvest limit for black rockfish from being exceeded.

For the state to conform its existing bag limit regulations to the new federal regulations, the Commission is scheduled to consider taking emergency action at its teleconference meeting on April 22, 2004. These changes need to be adopted on an emergency basis because the normal rulemaking process would not provide sufficient time for submission, review, and filing of the conforming regulations with the Secretary of State before the changes to federal regulations take effect. If the changes are not adopted, differing state and federal regulations would apply to recreational fishing for black rockfish, creating confusion for the public and difficulty for Department of Fish and Game (Department) enforcement staff. This constitutes an emergency for the preservation of public welfare.

Shared Management Authority

Under existing law, the federal Pacific Fishery Management Council (Council) manages and regulates 82 species of groundfish including rockfish, lingcod, California scorpionfish, some flatfish, and some sharks in waters off the states of California, Oregon, and Washington (Magnuson-Stevens Sustainable Fisheries

Act, 16 U.S.C. 1851). Under California law, the Commission regulates sport fishing in waters off California for all species, including those managed under federally adopted fisheries management plans (FMPs) and those which are not.

Since both the Council and the Commission establish regulations for these 82 groundfish species, the Commission routinely acts to bring its sport fishing regulations into conformance with federal regulations. Accordingly, the Commission provides input on management of these species annually or as needed to the federal management process through the state's representation on the Council. These conformance actions by the Commission ensure that state and federal rules for these species are consistent and enforceable.

Federal Management of Rockfish

The Council manages and sets harvest levels and/or optimum yields (OYs) for some groundfish species and species groups. The OYs are set at levels that are expected to prevent overfishing. Management measures are designed to achieve these prescribed harvest levels. These OYs and management measures are adopted by the Council and implemented via regulation by the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS).

Black rockfish are currently managed under a coastwide OY with the OY divided among the states of Washington, Oregon and California. In the 2003 assessment of west coast black rockfish stocks, it was determined that current population levels are at least at 40 percent of the unfished stock biomass. As a result, black rockfish are not considered an overfished stock and the OY has been set equal to the Acceptable Biological Catch (Federal Register Vol. 69, No. 46, Final Rules, March 9, 2004). For 2004, a harvest limit of 326 metric tons (MT) has been provided as California's share of the 1315 MT coastwide OY, to be split between California's sport and commercial fisheries.

Catches Exceed Allowable Limits

The recreational take of black rockfish in California in 2003 is estimated at 656 MT (preliminary estimates from Marine Recreational Fisheries Statistical Survey (MRFSS) catch data), well in excess of the statewide total limit for sport and commercial fisheries combined in 2004. The 2003 MRFSS catch data were not available to state or federal fishery managers when the 2004 fishery regulations were adopted during the fall of 2003. When compared to average recreational black rockfish catches from 2000 through 2002 (174 MT), the recreational catch in 2003 was more than three times greater.

Historically, most of California's statewide recreational black rockfish take has occurred in the NRLMA. Without the proposed prohibition of retention of black rockfish in the NRLMA, the estimated take of black rockfish in 2004 is projected

to exceed the statewide harvest limit. Based on the average take for 2002 and 2003, the recreational catch for 2004, under existing regulations, is currently projected to be 392 MT, more than the statewide harvest limit for commercial and recreational fisheries.

In addition, to reduce take of canary rockfish (an overfished species), the Council, at its April 2004 meeting, adopted an in-season measure to close waters deeper than 30 fm to recreational groundfish fishing in the NRLMA. The closure will begin on May 1 and it is expected to increase the recreational take of black rockfish from previous years due to greater fishing pressure in shallower waters. As a result of these impacts and given the potential for additional impacts if catches are not curtailed, the Council adopted in-season management measures to constrain California's recreational black rockfish catch in federal waters in 2004. The Department recommends that the Commission also adopt those same management measures in state waters.

Projected Catch Savings

At its April 2004 meeting, the Council also implemented new monthly seasonal closures for recreational groundfish fishing in the Central Rockfish and Lingcod Management Area (CRLMA) to reduce take of canary rockfish. Although those closures were designed to protect canary rockfish, the regulations are expected to reduce take of black rockfish in these areas as well. This savings, coupled with anticipated savings from the May and September through December prohibition on the retention of black rockfish in the NRLMA, is expected to keep catches within the statewide black rockfish harvest limit in 2004.

II. Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

III. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The Council's action, followed by Commission conforming action to prohibit retention of black rockfish during the months of May and

September through December in the Northern Rockfish and Lingcod Management Area, is anticipated to reduce recreational take of black rockfish in California. The proposed emergency action is expected to have an economic impact affecting businesses in Humboldt and Del Norte counties, although this is not expected to significantly affect the ability of California businesses to compete with businesses in other states. Individual sport fishermen and small businesses that service California's ocean sportfishing activities will be primarily impacted. Based on data from the Marine Recreational Fisheries Statistics Survey (MRFSS), approximately 21 percent (range 10 to 30 percent) of the recreational harvest of black rockfish from 2000 to 2003 was taken by anglers fishing on commercial passenger fishing vessels (CPFVs), and approximately 74 percent (range 64 to 90 percent) was taken by anglers fishing from private or rental boats. Thus, CPFVs that rely in large part on taking passengers fishing for rockfish comprise the small business sector that will be impacted. In addition, we expect a negative, but unquantifiable, economic impact on sportfishing shops and tackle manufacturers if anglers don't shift to fishing for other species.

However, since recreational fishing usually entails catch of assorted bottom fish species in the aggregate, it is difficult to estimate what portion of angling expenditures is due exclusively to the availability of black rockfish. Given that the recreational take of other groundfish will still be allowed under the proposed regulations, and that bag limits for other species of bottom fish will not change, the Department is unable to estimate an economic impact.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None

IV. Plain English Policy Statement:

It has been determined that the adoption/amendment of these regulations may affect small businesses. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342(e) and 11346.2(a) (1).

V. Authority and Reference:

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by Section 240 of the Fish and Game Code and to implement, interpret, or make specific Section 240 of said Code.

VII. Section 240 Finding:

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

VIII. References:

April 2004 Council Meeting List of Decisions. From: www.pcouncil.org/decisions/

The Status of Black Rockfish (*Sebastes melanops*) Off Oregon and Northern California in 2003. NMFS Santa Cruz Laboratory, Contribution Number 655, July 17, 2003 *in* Status of the Pacific Coast Groundfish Fishery Through 2003 and Stock Assessment and Fishery Evaluation. VOLUME I: Published August 2003

Federal Register, January 8, 2004. Department of Commerce, National Oceanic and Atmospheric Administration, 50 CFR Part 660. Proposed Rules. Page 1380-1414.

Federal Register, March 9, 2004. Department of Commerce, National Oceanic and Atmospheric Administration, 50 CFR Part 660. Final Rules. Page 11064-11124.

Proposed Acceptable Biological Catch and Optimum Yield Specifications and Management Measurements for the 2004 Pacific Coast Groundfish Fishery. Final Environmental Impact Statement. Pacific Fishery Management Council, December 2003.

Informative Digest (Plain English Overview)

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The prohibition on retaining black rockfish in the NRLMA in May and September through December is needed to prevent the statewide harvest limit for black rockfish from being exceeded in 2004. Without this proposed regulatory change, the estimated take of black rockfish in 2004 is projected to exceed the statewide harvest limit.

If the changes are not adopted, differing state and federal regulations would apply to recreational fishing for black rockfish, creating confusion for the public and difficulty for Department of Fish and Game enforcement staff.